

ELLEN F. ROSENBLUM  
Attorney General  
NICK M. KALLSTROM #050023  
Assistant Attorney General  
Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096  
Telephone: (503) 947-4700  
Fax: (503) 947-4794  
Email: Nick.M.Kallstrom@doj.state.or.us

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ALLEN T. REED,

Petitioner,

v.

BRANDON KELLY,

Respondent.

Case No. 2:21-cv-01499-HZ

DECLARATION IN SUPPORT OF JOINT  
MOTION TO STAY PROCEEDINGS

I, Nick M. Kallstrom, declare:

1. I am an attorney licensed to practice law in the State of Oregon and an Assistant Attorney General for the State of Oregon.
2. I am counsel for respondent in the above-captioned case.
3. By the accompanying motion, the parties are requesting that this Court stay these federal habeas proceedings pending the completion of petitioner's state-court proceedings.
4. In this federal habeas proceeding, petitioner challenges various convictions entered in Lane County Circuit Court Case Nos. 201313457 and 201314881. (ECF No. 1). The cases were indicted separately, and separate judgments were entered in each case, but the counts

in each indictment were tried together and were considered together in state court on direct and collateral review.

5. In Case No. 201313457, following a jury trial, petitioner was convicted of Kidnapping in the Second Degree, Rape in the First Degree, Sexual Abuse in the First Degree, Sodomy in the First Degree, Sexual Abuse in the Second Degree, and Coercion. (Ex. 101 at 5-9). On those convictions, petitioner was sentenced to a total of 314 months of incarceration. (*Id.*).

6. In Case No. 201314881, which was tried before the same jury, petitioner was convicted of Felon in Possession of a Firearm and Theft in the First Degree. (Ex. 101 at 10-12). On those convictions petitioner was sentenced to a total of 30 months of incarceration, to be served consecutively to the sentences imposed in Case No. 201313457. (*Id.*).

7. All of petitioner's convictions were the result of unanimous jury verdicts, with the exception of his conviction for Kidnapping in the Second Degree. (Tr. 532).

8. On December 30, 2022, the Oregon Supreme Court issued a decision in *Watkins v. Ackley*, 370 Or. 604 (2022). In *Watkins*, the court ruled that a conviction by a nonunanimous jury verdict is a "constitutional violation of [such] magnitude [that it] 'render[s] the conviction void' within the meaning of ORS 138.510(1)(a)—even if it is raised after the post-conviction prisoner's conviction became final." 370 Or. at 633.

9. On March 3, 2023, in Marion County Court Case No. 20CV21289, an Oregon post-conviction court entered a stipulated judgment based on *Watkins* that vacated petitioner's conviction for Kidnapping in the Second Degree. The stipulated judgment provided that all of petitioner's remaining convictions remain intact. The criminal case was remanded to the Lane County Circuit Court for further proceedings.

10. On August 3, 2023, the Lane County Circuit Court held a resentencing hearing in Case No. 201313457. Following that hearing, the court entered a new judgment of conviction, in which the single count of Kidnapping in the Second Degree was dismissed with no conviction,

impacting the calculation of his criminal history score with respect to at least one of his other convictions. As a result, the sentence imposed in Case No. 201313457 was reduced from 314 months of incarceration to 230 months of incarceration. Petitioner has filed a notice of appeal with respect to the resentencing hearing, and that appeal remains pending.

11. Although the judgment of conviction in Case No. 201313457 that petitioner challenges in this federal habeas proceeding no longer exists, and the new judgment entered in that case is the subject of ongoing state proceedings, the judgment of conviction in Case No. 201314881 remains undisturbed. Under these circumstances, the parties respectfully request that the Court stay these federal habeas proceedings until petitioner's state-court proceedings with respect to Case No. 201313457 are complete. Petitioner can then file a petition for writ of habeas corpus directed at the new judgment of conviction, and his challenges to the convictions entered Case Nos. 201313457 and 201314881 can be considered together here, as they were during the state-court proceedings.

12. The parties believe that a stay will result in the most efficient use of state, federal, and judicial resources.

13. If the Court grants the motion to stay these proceedings, the parties will submit status reports to this Court as often as the Court deems necessary.

14. I have contacted counsel for petitioner, Anthony Bornstein, who stated that petitioner joins in this motion.

**I declare under penalty of perjury that the foregoing is true and correct.**

EXECUTED on December 19, 2023.

s/ Nick M. Kallstrom  
NICK M. KALLSTROM  
Assistant Attorney General